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In the Supreme Court of the United States.

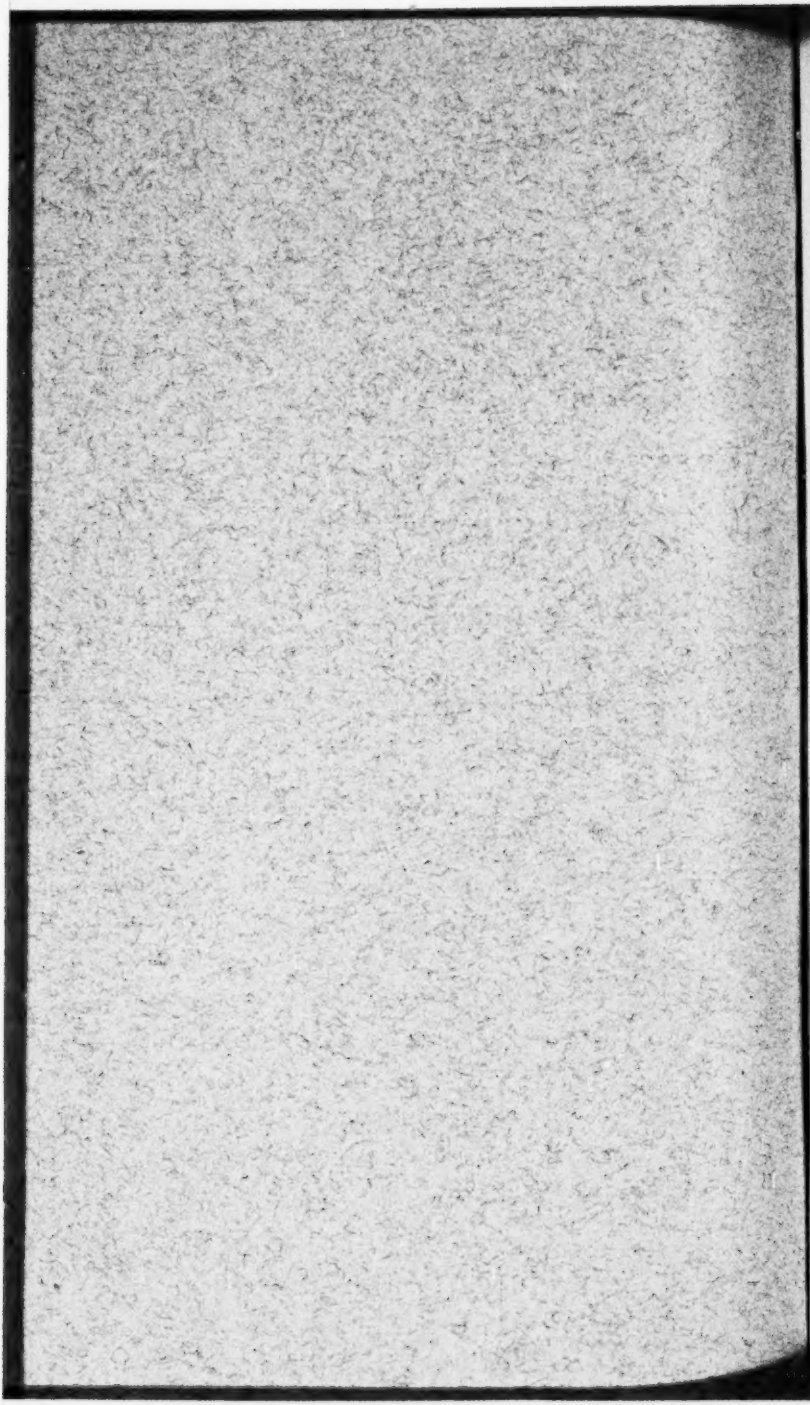
OCTOBER TERM, 1897.

LA ABRA SILVER MINING COMPANY, appellant, *v.* THE UNITED STATES. } No. 498.

APPEAL FROM THE COURT OF CLAIMS.

ON MOTION OF APPELLANT FOR AN ORDER DIRECTING "THAT THE CONSTITUTIONAL OBJECTIONS TO THE JURISDICTIONAL ACT BE FIRST HEARD AND DETERMINED."

WM. A. MAURY,
Special Assistant to the Attorney-General.



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BRIEF OF APPELLEE IN OPPOSITION TO THE MOTION.

This motion is based on what appears to us a fundamental misconception: That the special act of Congress, under which this suit was brought, casts upon this court, on appeal, the onerous duty of investigating, *de novo*, the great mass of confused, conflicting evidence in this case, for the purpose of determining the pure question of fact, whether "fraud effectuated by means of false swearing or other false and fraudulent practices" has been brought home to the appellant, "its agents, attorneys, or assigns."

We propose to show that Congress did not intend anything so unreasonable and so obstructive to the other business of this court, having provided for a final trial of the

facts by the high court to whose findings in matters of fact, under its general jurisdiction, the United States submits *as final, no matter how important the matter in controversy may be.*

The jurisdiction of the Court of Claims, in this case, was conferred by a special act of Congress approved December 28, 1892 (27 Stat., 409, c. 14), entitled "An act to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight.'" (See Appendix hereto, where the act is given in full.)

The purpose of the act is clearly indicated by its recitals, which are as follows:

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and
>
> Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated."

The act then proceeds (Sec. 1) to authorize and direct the Attorney-General "to bring a suit or suits in the name of the United States in the Court of Claims against the La Abra Silver Mining Company and all others making

claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns." * * *

The act then proceeds (sec. 2) to confer jurisdiction on the Court of Claims, as follows:

> That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said mixed commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

Section 3 is the provision under which this appeal was taken, and is as follows:

> That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party *within ninety days* from the rendition of such final decree *under the rules of practice which govern appeals from said court;* and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

To say now that this appeal involves the right of appellants to have a hearing *de novo* on the facts, as in equity causes generally, is to ignore the requirement of section 3 that an appeal to this court shall be "*under the rules and practice which govern appeals from said court.*"

"The rules of practice" referred to were prescribed by this court.

The first of these rules contains these provisions:

RULE 1.

In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court *upon the following record, and none other:*

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. *A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them;* and a separate statement of the conclusions of law upon said facts, upon which the court found its judgment or decree. *The finding of facts and conclusions of law to be certified to this court as a part of the record.*

If now the words of the statute are to have effect, how can there be a hearing *de novo* on the facts? How can there be *any hearing at all* in the absence of a finding of facts in the nature of a special verdict? The rule is peremptory that appeals shall be heard on records as prescribed by it, and "NONE OTHER," and the statute, by adopting the rule, has withdrawn from this court all control over it, so far as this case is concerned.

If Congress had intended that this court should be involved in a tedious investigation of the confused, conflicting, and voluminous evidence in this case, it would seem impossible to believe that the act would have provided that an appeal in the case should be subject to the rules of practice governing appeals from the Court of Claims.

When we consider that the questions of fact involved in this case had been before Congress for over ten years, perplexing that body and consuming a vast amount of time, to say nothing of expense, it is hardly probable that Congress was so indifferent to the public interests as to require this court to review on the facts any final decision the Court of Claims was to render in the case.

What such a review means is indicated in the opinion below on the merits, when the court speaks of the impossibility of dealing "in detail with the testimony" and of its extraordinary volume. The brief in support of this motion also foreshadows the severity of the labor involved in a hearing on the facts, where it says that "much time and attention will be required for a proper discussion and consideration of the questions of fact and law involved in the case," and that a hearing on the merits will be "*long and laborious.*"

It is safe to say that if the court enters on the facts of this case it will do little else from March 7, the day fixed for the hearing, to its adjournment.

It is conceded that there is no finding of facts by the court, nor is it pretended that appellant asked for any such finding, so that there has been an entire failure on the part of appellant to observe the requirements of this court in rules 4 and 5, regulating appeals from the Court of Claims, which are as follows:

RULE 4.

In all cases in which either party is entitled to appeal to the Supreme Court the Court of Claims shall *make and file their finding* of facts, and their conclusions of law therein, in open court, *before or at the time they enter their judgment in the case.*

RULE 5.

In every such case each party, at such time *before trial* and in such form as the court may prescribe, shall submit to it *a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.*

Outside of the questions of law arising upon the act of 1892, under which this suit was brought, *nothing remains in the case for determination* but the statutory issue:

Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Com-

pany was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

This case bears no resemblance to the case of *Harvey* v. *United States* (105 U. S., 671), where this court held that the special act of Congress under which the suit was brought conferred equity jurisdiction on the Court of Claims, and that, on appeal, this court must determine the facts as well as the law applicable thereto.

In that case, it will be observed, the special act in confering jurisdiction on the Court of Claims to proceed "*as a court of equity jurisdiction*," and, if need be, to reform the contracts in question, and render the proper relief, did not use any language indicating that an appeal in the case to this court should be conducted on rules of procedure different from those applicable to cases in equity generally. (See the act, 19 Stat. 490, c. 279.) And the same may be said of the case of *United States* v. *Old Settlers* (148 U. S., 427, 464), where this court reviewed the facts on appeal.

Never did a piece of legislation receive closer scrutiny or more anxious consideration than the act conferring jurisdiction of this case. Every word of it was pondered, and therefore should have its *full effect*.

The assumption that this is a suit in equity, in the technical sense, is gratuitous. The act does not so denominate it. The Attorney-General is merely "authorized and directed to bring *a suit or suits* in the name of the United States."

It is true that fraud is cognizable in equity, but it is also

cognizable at law; there being a concurrence of jurisdiction on the subject between courts of law and of equity. Nor was there any reason, growing out of the complicated inquiry involved, for investing the Court of Claims with jurisdiction in equity, because the methods of investigation used in that court are *precisely the same as those employed in courts of equity.*

It is true that the act (sec. 2) authorizes the Court of Claims to make "all interlocutory and final decrees" "according to the principles of equity and justice," and "to enforce the same by injunction or any proper final process," and "in all respects to proceed in said cause *according to law and the rules of said court*, so far as the same are applicable."

But when it is considered that Congress was dealing with an almost unprecedented case, which had baffled the executive and legislative departments of the Government, and was finally to be subjected to the judicial power of the Constitution, it seems clear that Congress did not have its attention fixed on any particular description of courts known to our judicature, but intended to create a jurisdiction *sui generis* and fitted to the extraordinary case before it, regardless of the landmarks of jurisdiction.

If Congress had proposed to make the Court of Claims a court of equity for the purposes of this case it would have so declared, as it did in the special act involved in the case of *Harvey* v. *United States* (*supra*). Nothing relating to jurisdiction would have been left to implication in a piece of legislation so intimately connected with

the relations between the United States and a friendly power, and which had been violently assailed because, as alleged, it trenched on the province of the Executive, violated international law, and trampled under foot the principle of *res judicata*. If the foregoing views are correct, it follows that the motion is without support, and should be denied.

WM. A. MAURY,
Special Assistant to the Attorney-General.

APPENDIX.

AN ACT to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which said court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

Approved, December 28, 1892. (27 Stat. 409, c. 14.)

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